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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CA-SAN JOSE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHARLES MCKAIN,

Plaintiff,

vs.

FMA ALLIANCE, LTD.,

Defendant.

) Case No. **C09 05952 HRL**
) COMPLAINT FOR VIOLATION
) OF FEDERAL FAIR DEBT
) COLLECTION PRACTICES ACT,
) ROSENTHAL FAIR DEBT
) COLLECTION PRACTICES ACT,
) AND INVASION OF PRIVACY
)
)

I. INTRODUCTION

1. This is an action for damages brought by an individual consumer for
2 Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §
3 1692, *et seq.* (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection
4 Practices Act, Cal Civ Code § 1788, *et seq.* (hereinafter "RFDCPA"), both of
5 which prohibit debt collectors from engaging in abusive, deceptive, and unfair
6 practices. Ancillary to the claims above, Plaintiff further alleges claims for
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1 invasion of privacy arising from intrusion upon seclusion and public disclosure of
2 private facts.
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4 **II. JURISDICTION**

5 2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d).
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7 **III. PARTIES**

8 3. Plaintiff, Charles McKain (“Plaintiff”), is a natural person residing in
9 Santa Clara county in the state of California, and is a “consumer” as defined by
10 the FDCPA, 15 U.S.C. § 1692a(3) and is a “debtor” as defined by Cal Civ Code
11 1788.2(h).
12

13 4. At all relevant times herein, Defendant, FMA ALLIANCE, LTD.
14 (“Defendant”) was a company engaged, by use of the mails and telephone, in the
15 business of collecting a debt from Plaintiff which qualifies as a “debt,” as defined
16 by 15 U.S.C. §1692a(5), and a “consumer debt,” as defined by Cal Civ Code §
17 1788.2(f). Defendant regularly attempts to collect debts alleged to be due
18 another, and therefore is a “debt collector” as defined by the FDCPA, 15 U.S.C. §
19 1692a(6), and RFDCPA, Cal Civ Code § 1788.2(c).
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22 **IV. FACTUAL ALLEGATIONS**
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24 5. At various and multiple times prior to the filing of the instant
25 complaint, including within the one year preceding the filing of this complaint,
26 Defendant contacted Plaintiff in an attempt to collect an alleged outstanding debt.
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1 Defendant's conduct violated the FDCPA and the RFDCPA in multiple ways,
2 including but not limited to:

- 3 a) Causing a telephone to ring repeatedly or continuously
4 to annoy Plaintiff (Cal Civ Code § 1788.11(d)),
5 including, but not limited to, calling Plaintiff more than
6 twice a day;
- 7 b) Causing Plaintiff's telephone to ring repeatedly or
8 continuously with intent to harass, annoy or abuse
9 Plaintiff (§ 1692d(5)), including, but not limited to,
10 calling Plaintiff more than twice a day;
- 11 c) Communicating, by telephone or in person, with
12 Plaintiff with such frequency as to be unreasonable and
13 to constitute an harassment to Plaintiff under the
14 circumstances (Cal Civ Code § 1788.11(e)), including,
15 but not limited to, calling Plaintiff more than twice a
16 day;
- 17 d) Communicating with Plaintiff at times or places which
18 were known or should have been known to be
19 inconvenient for Plaintiff, (§ 1692c(a)(1)); and
- 20 e) Where Defendant had not yet made an attempt to
21 contact Plaintiff's counsel or had not given Plaintiff's
22 counsel sufficient time to respond to the initial attempt
23 to communicate with Plaintiff's counsel, and where
24 Plaintiff's counsel had not given Defendant permission
25 to contact Plaintiff directly, communicating with
26 Plaintiff directly after learning that Plaintiff is being
27 represented by counsel (§ 1692c(a)(2), including, but
28 not limited to, continuing to call Plaintiff after counsel
sent a letter to Defendant dated November 9, 2009.

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25 6. Defendant's aforementioned violations of the FDCPA and RFDCPA
26 also constitute an intentional intrusion into Plaintiff's private places and into
27 private matters of Plaintiff's life, conducted in a manner highly offensive to a
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reasonable person. Plaintiff had a subjective expectation of privacy that was objectively reasonable under the circumstances.

7. Defendant's aforementioned disclosure of facts regarding Plaintiff's debt to third parties constitutes a public disclosure of a private fact not of legitimate public concern. Defendant's disclosures were highly offensive to a reasonable person.

8. As a result of the above violations of the FDCPA, RFDCPA and invasion of privacy, Plaintiff suffered and continues to suffer injury to Plaintiff's feelings, personal humiliation, embarrassment, mental anguish and emotional distress, and Defendant is liable to Plaintiff for Plaintiff's actual damages, statutory damages, and costs and attorney's fees.

**COUNT I: VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT**

9. Plaintiff reincorporates by reference all of the preceding paragraphs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the FDCPA;
- B. Actual damages;
- C. Statutory damages;

- 1 D. Costs and reasonable attorney's fees; and,
- 2 E. For such other and further relief as may be just and proper.

4 **COUNT II: VIOLATION OF ROSENTHAL**
5 **FAIR DEBT COLLECTION PRACTICES ACT**

- 6 10. Plaintiff reincorporates by reference all of the preceding paragraphs.
- 7 11. To the extent that Defendant's actions, counted above, violated the
- 8 RFDCPA, those actions were done knowingly and willfully

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10 **PRAYER FOR RELIEF**
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12 WHEREFORE, Plaintiff respectfully prays that judgment be entered
13 against the Defendant for the following:

- 14 A. Declaratory judgment that Defendant's conduct
15 violated the RFDCPA;
- 16 B. Actual damages;
- 17 C. Statutory damages for willful and negligent violations;
- 18 D. Costs and reasonable attorney's fees,
- 19 E. For such other and further relief as may be just and proper.

21 **COUNT III: COMMON LAW INVASION OF PRIVACY BY INTRUSION**
22 **AND INVASION OF PRIVACY BY PUBLICATION OF PRIVATE FACTS**

23 12. Plaintiff reincorporates by reference all of the preceding paragraphs.

24 **PRAYER FOR RELIEF**
25

26 WHEREFORE, Plaintiff respectfully prays that judgment be entered
27 against the Defendant for the following:

- 1 A. Actual damages
- 2 B. Punitive Damages; and,
- 3 C. For such other and further relief as may be just and proper.

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5 **PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY**

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8 Respectfully submitted this 14th day of December, 2009.

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